

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

PERRY JOHNSON,

Defendant.

)
) **CASE NO: 1:12 CR 587 AND**
) **1:13 CR 376**
)
) **Judge Dan Aaron Polster**
)
)
)
) **OPINION AND ORDER**

Before the Court is Defendant Perry Johnson's letter requesting compassionate release. [ECF Doc. 81](#). On December 10, 2013, Johnson was sentenced to 300 months in prison, after he pleaded guilty to robbery, brandishing a firearm during a crime of violence, possession with intent to distribute oxycodone and escape. [ECF Doc. 43](#). He is currently being held at Beaumont USP with an expected release date of September 23, 2034.¹

Johnson's letter references [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#)'s exhaustion requirement, but he has not shown that he actually exhausted his request for compassionate release. Under *United States v. Alam*, the request may come through a motion filed by the inmate after he has "fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the [prisoners]'s behalf" or after "the lapse of 30 days from the receipt of such a request by the warden of the [prisoner]'s facility, whichever is earlier." *United States v. Alam*, [960 F.3d 831](#) (6th Cir. 2020). Here, it is not clear whether Johnson has even exhausted his request for early

¹ [Federal Bureau of Prisons Inmate Search as of June 29, 2022](#).

release. But even if he has, he has failed to show that a sentence reduction is proper under the 18 U.S.C. § 3553(a) sentencing factors.

As authorized by 18 U.S.C. § 3582(c)(1), two requirements must be met before the Court may grant a compassionate release. 18 U.S.C. § 3582(c)(1). The Court must find: (A) extraordinary and compelling circumstances permit sentence reduction; and (B) the reduction is proper considering the 18 U.S.C. § 3553(a) sentencing factors, “to the extent they are applicable.” *Id.*

Johnson argues that his obesity is an extraordinary and compelling reason for compassionate release. When determining whether the concern of contracting COVID-19 becomes an extraordinary and compelling reason for compassionate release, courts consider the following factors: (1) whether defendant is at high risk of having complications from COVID-19; and (2) whether the defendant’s prison has a severe COVID-19 outbreak. *United States v. Elias*, 984 F.3d 516 (6th Cir. 2021) (citing *United States v. Hardin*, No. 19-CR-240, 2020 U.S. Dist. LEXIS 90855, 2020 WL 2610736, at *4 (N.D. Ohio May 22, 2020)).

Although he has not produced any evidence documenting his obesity, Mr. Johnson represents he is obese and has a BMI of 30. ECF Doc. 81 at 5. The Centers for Disease Control and Prevention (“CDC”) identifies a non-exhaustive list of COVID-19 medical conditions on its website, which can “place a person at higher risk of severe illness from COVID-19.”² The CDC has determined that being obese may increase the likelihood of severe illness from COVID-19. See *United States v. Elias*, 984 F.3d 516, 521 (6th Cir. Jan. 6, 2021) (“[r]elying on official

² Centers for Disease Control and Prevention, *People with Certain Medical Conditions* (last accessed June 29, 2022.)

guidelines from the CDC is a common practice in assessing compassionate-release motions”). And it appears that operations are currently being modified at Beaumont USP due to COVID-19.³ However, Johnson has not indicated whether he has been offered and/or received the vaccine for COVID-19. For this reason and because Johnson has not submitted evidence documenting his medical condition, the court is not in a position to determine whether Johnson’s alleged obesity places him at greater risk of severe illness from COVID-19.

Moreover, even if Mr. Johnson could establish an “extraordinary and compelling reason” for a sentence reduction, compassionate release would be inappropriate considering the sentencing factors listed in [18 U.S.C. § 3553\(a\)](#). The statute lists seven factors the Court must weigh, including: the nature and circumstances of the offense as well as the defendant’s history and characteristics; the need for the sentence; the types of sentences available; the sentencing range; any pertinent policy statement; the need to avoid sentence disparities among similar defendants; and the need to provide restitution to victims. [18 U.S.C. § 3553\(a\)](#). These factors are initially considered during sentencing. In deliberating a motion for compassionate release, the Court must consider whether the factors support a sentence modification. [18 U.S.C. § 3582\(c\)\(1\)](#).

Mr. Johnson has over 10 years remaining in his sentence and was convicted of very serious offenses including brandishing a firearm during a crime of violence. [ECF Doc. 43](#). Given the nature of Mr. Johnson’s offenses, he presents a danger to the community and a reduction in his sentence is not appropriate at this time. *See United States v. Relliford*, No. 20-3868, [2021 U.S. App. LEXIS 5188](#), at *2-3 (6th Cir Feb. 22, 2021) (finding that the district court properly considered the § 3553(a) factors when looking at the seriousness of the offense as well

³ <https://www.bop.gov/locations/institutions/bmp/>

as the amount of time remaining on the defendant's sentence). Mr. Johnson has not submitted any evidence to the contrary. His main support for seeking early release is an article reporting a violent outbreak in his prison resulting in the death of two inmates. *See* [ECF Doc. 81-1](#). But the fact that Johnson has been exposed to violent crimes while in prison does not merit his early release. The § 3553(a) factors weigh against granting Mr. Johnson's request for compassionate release.

Accordingly, for the reasons stated herein, the Court DENIES Johnson's request for compassionate release. [ECF Doc. 81](#).

IT IS SO ORDERED.

Dated: June 29, 2022

s/Dan Aaron Polster

United States District Judge